THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.28728 of 1995

Dated:7.11.2006

Between
No.830742422 Constable
S.Krishna, s/o Narsimha,

.....Petitioner

and

1. The Union of India rep., by
its Secretary for Home Affairs,
Govt of India, New Delhi and
Others.

…Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.28728 of 1995

ORDER:

This writ petition is filed seeking to declare the order of the 5th respondent dated 16.07.1993 as confirmed by the 4th respondent in appeal No.R.XIII-11/94-Estt, dated 10.6.1994 as arbitrary and illegal and consequently to direct the respondents to reinstate the petitioner with all attendant benefits.

It is the case of the petitioner that he was appointed in the Central Reserve Police Force (for short 'CRPF') as a Constable on 1.4.1983. On 22.10.1986, he was deputed to the SVP National Police Academy, Hyderabad (for short 'NPA'). While working on deputation, in NPA, he fell ill due to severe peptic ulcer from 29.11.1991.

Subsequently, he was repatriated to his parent department i.e., CRPF on 1.2.1992 and he was directed to report duty at 69 Batallian, CRPF, Moga, Punjab. However, no posting orders were issued and he was informed by the NPA that he was repatriated to his parent department. The petitioner has sent telegrams and also medical certificates stating that his leave may be extended as he is suffering from peptic ulcer. Thereafter, he reported to duty on 17.3.1993 at 69 Batallian, and he was directed to be examined by the Civil Surgeon, Faridkot for obtaining report as to whether the petitioner actually suffered from peptic ulcer and if so, could it have been so serious as to necessitate complete rest for 390 days. The Civil Surgeon, Faridkot has further referred the petitioner to Medical Superintendent, Guru Gobind Singh Medical Hospital, Faridkot where various tests were conducted. The Civil Surgeon, Faridkot vide his letter dated 24.6.1993 sent report to the 69 Batallion stating that the petitioner is having duodenal ulcer as per the report of the Radiology

Department. However, it was stated that though the petitioner is having peptic ulcer he could have not been so serious as to necessitate complete rest for 390 days.

In view of the said report after conducting an enquiry into the matter, the petitioner was dismissed from service vide orders dated 16.7.1993 of the 5th respondent. Aggrieved by the same, the petitioner carried the matter in appeal before the 4th respondent-Deputy Inspector General of Police, Ferozpur. The 4th respondent also confirmed the order passed by the 5th respondent vide his proceedings dated 10-6-1994. Aggrieved by the same, the present writ petition is filed.

Learned counsel for the petitioner submits that the petitioner had put in about 9 years of clear and sincere service before his services were terminated with effect from 16.7.1993. The fact that the petitioner was ill and suffering from peptic ulcer is confirmed even by the Medical Officer at Faridkot. In spite of that, the respondents on some technical grounds dismissed the petitioner from

service stating that the certificates obtained by him from the Medical Officer at Hyderabad and from a private practitioner, necessitating complete rest is not believable. Such a finding of the authorities is unwarranted in the facts and circumstances of the case. Even assuming that the same is true, the punishment of dismissal from service is disproportionate to the misconduct alleged against the petitioner.

Per contra, learned counsel for the respondents strenuously contended that there was no option for the authorities since the medical certificates produced by the petitioner were not believable and further may be, the petitioner suffered with peptic ulcer, but that itself did not necessitate complete rest of 390 days, and it is only an after thought. Therefore, the orders passed by the 5th respondent as confirmed by the 4th respondent does not require any interference by this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the

respective submissions made by the learned counsel on either side and perused the material made available on record.

At the out set, I am of the opinion that the order of dismissal passed by the 5th respondent as confirmed by the 4th respondent does not stand the scrutiny of law and therefore, they are liable to be set aside.

The primary authority, in fact, noticed that the petitioner has submitted medical certificates issued by various medical officers both private and Government as well as counter signed by the medical officer.

i) 16.01.92 to 3.2.92 : From Dr.P.Veerabhadra Rao, MBBS
ii) 4.2.92 to 19.2.92 Civil Assist Surgeon, Govt. Hospital,
iii)20.2.92 to 10.3.92 Malakpet, Hyderabad.
(Though he is a Govt. Dr. the certificate was obtained from his private clinic)

iv) 10.3.92 to 30.9.92 Dr. Mohiuddin, MBBS Regd.No.

v)1.10.92 to 31.10.92 5880 Dabirpura, Hyderabad who is
vi)1.11.92 to 31.12.92 a private practitioner, counter signed
vii) 1.1.93 to 15.1.93 by 1st RMO Osmania General
viii)16.1.93 to 31.1.93 Hospital, Hyderabad.
ix)1.2.93 to 23.02.93

The above certificates are not in dispute. In fact, when the petitioner reported to duty on 17.3.93 he was referred to the Civil Surgeon, Faridkot, who in turn, referred the petitioner to Guru Gobind Singh Medical Hospital, Faridkot where various tests were conducted. On the basis of the report of Radiology Department, Guru Gobind Singh Medical Hospital, the Civil Surgeon, Faridkot vide his letter dated 24.6.1993, stated that the petitioner is suffering from duodenal ulcer and even though the petitioner is suffering peptic ulcer, it could not have been necessitated rest for 390 days. This itself shows that the petitioner was suffering from peptic ulcer.

It is not the case of the respondents that as

soon as he was repatriated, he developed this health problem. In fact before he was repatriated to his parent department ie., 29.11.1991, he fell ill due to peptic ulcer. Therefore, it cannot be said that it necessitated him to take rest for some time. Therefore, once the petitioner's suffering from peptic ulcer is not denied, the certificates issued by various medical officers at Hyderabad i.e., Civil Assistant Surgeon, Government Hospital, Malakpet, Hyderabad, and from a private practitioner, counter signed by RMO, Osmania General Hospital, Hyderabad, could not have been brushed aside. May be the petitioner has taken little more leave than required. But it is a fact that the Civil Assistant Surgeon, Government Hospital, Malakpet Hyderabad, and Private Practitioner, counter signed by the Medical Officer, Osmania General Hospital, Hyderabad have certified that the petitioner is suffering from peptic ulcer, Therefore, he was advised to take rest. In fact, the petitioner with such a serious problem, even if he has joined, he could not have worked in the organization

properly.

The respondents instead of taking a lenient view of the matter, have adopted a pedantic procedure and decided to dismiss the petitioner from service. It is not their case that the petitioner is a habituated to absent from duty or any other misconduct to his credit earlier.

For all the above reasons, I am of the opinion that the respondents could have imposed any other lesser punishment than that of the dismissal from service, in the facts and circumstances of the case. Generally speaking, if Court comes to such a conclusion, the matter is required to be remitted to the 5th respondent for re-consideration. But, since it is more than 12 years, the petitioner was removed from service, I am of the opinion, the matter can be given quietus here itself by suggesting an alternative punishment to that of the dismissal from service.

In view of the above, the order passed by the 5th respondent as confirmed by the 4th respondent are set aside, and the respondents are directed to

reinstate the petitioner forthwith with continuity of service, with all attendant benefits, but without back wages.

Writ petition is allowed accordingly. No costs.

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7-11-2006

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